

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0282P**

**Sales And Use Tax**

**Calendar Years: 1995, 1996, And 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Negligence Penalty.** – Imposition

Authority: 45 IAC 15-11-2(b)

The taxpayer protests the imposition of the 10% negligence penalty.

**STATEMENT OF FACTS**

The taxpayer sells and installs carpet, tile, and wood. The taxpayer sells to building contractors, general public, churches, and schools. The taxpayer is located in Fort Wayne, Indiana. The taxpayer has no use tax assessment system. The taxpayer files as a subchapter "S" corporation.

I. **Negligence Penalty.** – Imposition

**DISCUSSION**

For several years, the taxpayer operated as a "labor only" service business providing carpet installation. In the early 1990's, the business incorporated and continued to provide installation services to the general public. In 1992, the business opened a store where the taxpayer offered carpet, tile, and wood for sale. Much of the product the taxpayer sold was purchased from out-of-state. Along with these purchases, miscellaneous items were also purchased along with the product to which the taxpayer was liable for use tax. As the taxpayer

was unaware use tax was due, the taxpayer did not remit use tax to the State of Indiana.

Indiana Regulation 45 IAC 15-11-2(b) state, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

As the taxpayer was unaware of the use tax obligation, the taxpayer is negligent and subject to the negligence penalty.

### **FINDING**

The taxpayer's protest is denied. The taxpayer was unaware of use tax regulations and is negligent.